## **Testimony of**

## Cambridge Consumers' Council Massachusetts Consumers' Coalition

## By Corey R. Pilz Cambridge Consumers' Council

Before the Joint Committee on Community Development and Small Business Commonwealth of Massachusetts

> Representative Linda Dorcena Forry, Co-Chair Senator Sal N. DiDomenico, Co-Chair

Committee Hearing Examining Item Pricing Legislation: S. 94 and H. 100

01 June 2011

Chairwoman Forry, Chairman DiDomenico, and Members of the Committee on Community Development and Small Business:

My name is Corey Pilz, Consumer Information Specialist for the Cambridge Consumers' Council. The Council, a City of Cambridge agency, works in cooperation with the Office of the Attorney General in investigating and monitoring consumer problems and trends in the marketplace. Using the experience and information gained from the hundreds of individual complaints filed each year by area residents, the Council serves as an informed voice offering suggestions for new or amended legislation that would influence consumer protection for the citizenry. My testimony today is also on behalf of the Massachusetts Consumers' Coalition, an association of local, state and federal consumer agencies; consumer advocacy organizations; and nonprofit agencies concerned with protecting the citizenry and ensuring fairness in the marketplace.

To begin, I wish to thank you for a second opportunity to testify regarding the Food Store Item Pricing Law. Again, I wish to convey the concern of consumer advocates throughout the Commonwealth as the two bills before us today essentially seek to weaken or repeal the current law without proposing an alternative that would provide similar consumer protections to the citizenry. As such, we ask you to *oppose S. 94 and H. 100* and maintain the current law and the fundamental benefits and protections it affords to consumers.

We also understand it may be of this Committee's interest to move a piece of legislation forward, and as such, we urge you delay action on any bill in order to consider the additional consumer protections proposed today by my colleague and fellow coalition member, Edgar Dworsky, as a way of ensuring consumer interests while addressing the concerns of the retail industry.

In this testimony, we hope to provide background on why the current law is not only a beneficial tool for consumers, but why it serves as an effective policy designed to ensure a level playing field exists between consumers and retailers in the marketplace in comparison to the alternatives offered by these bills.

#### ITEM PRICING AS AN EFFECTIVE CONSUMER TOOL IN THE MARKETPLACE

Price disclosure has always been seen as a fundamental way for consumers to exercise their rights within the marketplace. The actual act of creating policy around the disclosure of information to the general public is often seen as only being effective if *the right information is presented at the right time and can be found in the right place by its target audience*. Such a policy will therefore enable the target audience to process the information in a meaningful way, allowing it to be factored into their perceptions and calculations, which will in turn affect the audience's behavior.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> My written testimony, presentation and responses to questions are my own and do not necessarily reflect the views of the City of Cambridge or any member of the Cambridge City Council.

<sup>&</sup>lt;sup>2</sup> See "From Food to Finance: What Makes Disclosure Policies Effective?" By Archon Fung, Mary Graham, David Weil and Elena Fagotto. A. Alfred Taubman Center for State and Local Government, Kennedy School of Government, Harvard University. Taubman Policy Brief PB-2005-3.

The Food Store Item Pricing Law allows consumers to easily identify the price of an item just by looking at it. By being able to instantly have access to the price of most items throughout the grocery shopping experience, consumers are constantly able to evaluate their purchase as a whole while being able to easily comparison shop from one side of the store to the other. By presenting the consumer with the price of an item in this manner, we are enabling them to make smart buying decisions, which is especially essential during these tough economic times. It is no secret that food costs are one of the biggest parts of a household budget, and looking for lower costs is important for many families as the price of food rises. Thus, consumers now need a policy that will allow for an easy way to comparison shop more than ever, and item pricing continues to serve as a quick and accurate means to do so versus the alternatives proposed by H. 100, and by extension, H. 987.

# S.94: ALLOWING WAREHOUSE CLUBS TO BE EXEMPT FROM PRICING REQUIRMENTS

By allowing warehouse clubs to be exempt from the Food Store Item Pricing Law, we are essentially asking consumers to change their grocery shopping habits within these establishments. Furthermore, there is a continued, demonstrated need for item pricing in these establishments for the following reasons:

- Warehouse clubs often serve as a functional equivalent of a whole supermarket. Grocery departments within these establishments typically encompass about 40% of the stores. Consumers continue to rely on these stores to purchase essential items. Thus, they should be afforded with the same benefits in these establishments that they receive while shopping at other grocery retail locations.
- Warehouse clubs have a continued poor compliance record with the Food Store Item Pricing Law.

Warehouse clubs have among the worst records of compliance with the current item pricing law. In July 2010, the Division of Standards surveyed ten (10) grocery retailers and one hundred (100) retail locations from around the state, resulting in a total of \$143,750 in fines after finding 2,443 instances where items were missing pricing labels. Among those surveyed, the three (3) warehouse club retailers, a total of twenty-four (24) retail locations, constitute close to 40% of the total violations found. The worst retail chain surveyed, BJ's Wholesale Club, was previously fined \$144,000 in one two year period, ending in 2007, by inspectors for failing to properly price items.

• Warehouse clubs have a poor scanner compliance record.

The Office of the Attorney General maintains a regulation [940 CMR 3.13(1) promulgated pursuant to M.G.L. c. 93A, §2(c)] that allows non-grocery retailers to install customer-operated price scanners and label printers in store aisles instead of marking prices directly on individual items. To qualify for an exemption from item pricing, one scanner must be installed for every 5000 square feet of space, and it must: be clearly identified with signs at and above eye-level, display the price of any item scanned by a customer, and print a price sticker or tag that the shopper can affix to the product. In a test conducted by Consumer

<sup>&</sup>lt;sup>3</sup> See OCABR Press Release, Patrick-Murray Administration's Division of Standards Fines Food Retailers \$143,000 for Item Pricing Violations (Sep. 7, 2010), <a href="http://www.mass.gov/?pageID=ocapressrelease&L=1&L0=Home&sid=Eoca&b=pressrelease&f=20100907\_DOS\_itempricing&csid=Eoca">http://www.mass.gov/?pageID=ocapressrelease&L=1&L0=Home&sid=Eoca&b=pressrelease&f=20100907\_DOS\_itempricing&csid=Eoca</a>.

World in 2009, three (3) BJs stores were visited. Each is roughly 110,000 square feet. As such, under the AG's regulation, each store should be outfitted with 21 aisle scanners. There were only four scanners in Medford, three of which were non-compliant with the law. They had none in Peabody and only one in Stoneham.<sup>4</sup>

In addition to allowing a complete exemption to the Food Store Item Pricing Law, S. 94 does not call for a replacement to item pricing that would ensure consumers receive adequate price disclosure. As such, the bill would drastically alter the marketplace in the following manner:

- No assurance that proper price information will be provided to the consumer.

  If there is a variation in prices—one price in an advertisement, another price on the shelf, and yet another in the checkout scanner, the consumer no longer has a way to verify the price, which is currently done by being able to simply look at the price sticker on the item. In addition, this bill does not require stores to install aisle scanners as a substitute for item pricing. This means that warehouse club shoppers may encounter product displays that neither have prices on the items nor on price signs.
- No allowance for a meaningful enforcement mechanism that will affect the retailer's behavior.

If warehouse clubs were to be exempt completely from the Food Store Item Pricing Law, enforcement by means of compliance inspections conducted by the Director of the Commonwealth's Division of Standards or his inspectors, and sealers and inspectors of weights and measures could no longer occur. Furthermore, Division of Standards inspectors are not allowed to check and fine aisle scanners or signs elsewhere in the store under the Attorney General's regulation. Thus, there would be little oversight of these establishments given the Attorney General has brought no action under this regulation to date.

- <u>Unequal playing field between retail businesses in the marketplace.</u>
  Allowing an exemption for warehouse clubs would be unfair to traditional supermarkets and superstores that would be required to comply with the Food Store Item Pricing Law.
- <u>Unfair to consumers who choose to shop at these retailers.</u>
  Once again, consumers who choose to shop at these discount stores should by no means have check their consumer protections at the door. Price comparison shopping will become very difficult in these establishments.

## H.100: ERADICATE ITEM PRICING BY MEANS OF NON-PRINTING AISLE SCANNERS AND FEE WAIVER

Allowing the installation of aisle scanners that would allow consumers to price the item themselves may reduce the burden on the retail industry; however, we believe replacing price stickers with these scanners is not the answer to clear price disclosure. For the reasons previously

<sup>&</sup>lt;sup>4</sup> See MASSPIRG/Consumer World, Retailers Flunk Scanner Test (July 23, 2009), www.masspirg.org/static/itemscanprsconsumerworld.pdf.

discussed in my testimony on May 4<sup>th</sup> before this Committee, abolishing item pricing would drastically alter the way consumers shop. Although this bill calls for a greater number of scanners to be installed in stores as compared to previous bills, it does not provide for any means of knowing the price of an item after leaving the scanner since such scanners are not required to print price labels. This could become quite burdensome, especially for our most vulnerable consumers, given the number of items grocery shoppers purchase during a shopping trip as compared to other retail shopping that currently utilizes such scanners. Once again, if the right information is not presented at the right time in the right place, such disclosure becomes a useless tool as it does not allow the consumer to process the information in a meaningful way.

#### **CONCLUSION**

Certainly in these tough economic times, we must recognize that consumers need *more* price disclosure, as violations of the current law are still being found within stores that our consumers depend on for their basic, essential needs. Weakening the enforcement mechanisms of the current law only allows retailers a greater opportunity to take advantage of the consumer in the marketplace. Each of these bills will help severely weaken a consumer's influence in the retail industry. As we have learned in the past, when a consumer's clout is compromised, an equal playing field no longer exists in the marketplace. Therefore, we ask the Committee oppose these item pricing bills and consider building in additional consumer protections.

Thank you for this opportunity to share our concerns. We welcome the opportunity to continue working with this Committee to craft a bill that ensures the continued protection of the citizenry.